diction merges the original cause of action so that it can not thereafter be the basis of a new suit in another state. *North Bank* v. *Brown,* 50 Me. 214, 79 Am. Dec. 609; *Baxley* v. *Linah,* 16 Pa. St. 241, 55 Am. Dec. 494; *McGilvray* v. *Avery,* 30 Vt. 538. Therefore it would seem that "a judgment is extinguished when, being used as a cause of action, it grows into another judgment.' *Garvin* v. *Garvin, 27* S. C. 472, 477, 4 S. E. 148; *Lawton* v. *Perry,* 40 S. C. 255, 265, 18 S. E. 861; *Gould* v. *Hayden,* 63 Ind. 443; *Price* v. *First Nat. Bank,* 62 Kan. 735, 84 Am. St. Rep. 419, 64 Pac. 637; *Whiting* v. *Beebe* 7 Eng. (Ark.) 421; *Purdy* v. *Doyle,* 1 Paige 558. However, the principal case prefers the other line of authorities, proceeding on the ground, as it says, that "a judgment on a judgment, being of the same dignity, does not fall within the general rule that a cause of action is merged in the judgment." *Weeks* v. *Pearson,* 5 N. H. 324; *Jackson* v. *Shaffer,* 11 Johns. 513; *Springs* v. *Pharr,* 131 N. C. 191, 42 S. E. 590, 92 Am. St. Rep. 775; *Armour* v. *Addington,* 1 Ind. Terr. 304, 37 S. W. 100; *Andrews* v. *Smith,* 9 Wend. 53; *Mumford* v. *Stocker,* 1 Cow. 178. To the argument that a debtor would be harassed by a large number of creditor's judgments, the court gave the succulent answer, in the principal case, that to avoid this, let the debtor pay his due.

JUDGMENT—IRREGULARITY OF PROCEEDING—COLLATERAL ATTACK.—The statute provided that summons was to be served by the sheriff of the county where the defendant was found, or by a person not a party to the action, and in the latter contingency to be returned with an affidavit of its service. A summons was served by the sheriff of Logan county, in Arapahoe county, not acting as sheriff, but as a person not a party to the action as provided by the statute, but the return lacked the required affidavit. The action went by default, and judgment was rendered thereon. In a later action this judgment was attacked collaterally on account of the irregularity in the return of summons, and *held,* the judgment was void. *Munson* v. *Pawnee Cattle Co.* (Colo. 1912), 126 Pac. 275.

It is believed that this case does not follow the better rule, for holding the return jurisdictional is an inducement to the opposite party not to defend, but to rely on defeating the proceeding collaterally on such grounds, or if he knows of the defect to let it pass with intent to defeat the judgment by it. This makes the result turn on trick, rather than on the merits of the case. If the party knows of the defect, let him speak, or thereafter hold his peace. *Ballinger* v. *Tarbell,* 16 Ia. 491, 85 Am. Dec. 527; *Smoot* v. *Judd,* 184 Mo. 508, 83 S. W. 481. See also, *Campbell* v. *Hays,* 41 Miss. 561, which is in direct conflict with the principal case on precisely the same state of facts. As bearing directly on the subject, 1 MICH. L. REV. 645; *Cole* v. *Butler,* 43 Me. 401; and 10 MICH. L. REV. 384.

MASTER AND SERVANT—INJURY TO RAILROAD EMPLOYE.—The decedent was a brakeman in the employ of the defendant company and was killed while crossing the switchyards of the company on his way home from work. The evidence showed that the accident was caused by a car backing against the decedent, that it happened in the night time, that there was no light on the

car, that there was no brakeman thereon, that the car was moved without notice or warning and that, while there was no fixed path, it was customary for the employes to cross this part of the yards on their way to and from work. *Held,* in the absence of a custom requiring such notice or warning, the evidence is insufficient to prove actionable negligence, there being nothing to show that the cars were not being moved in the usual and ordinary manner. *Hoffman* v. *Chicago and N. W. Ry. Co.* (Neb. 1912), 137 N. W. 878.

In coming to its decision the court dismisses the question of the custom of the employes to cross the track by the statement that they did not use any defined path. In the cases cited by the court, this question does not come up, the cases nearest in point being *Crowe* v. *N. Y. C. & H. R. Ry. Co.,* 23 N. Y. Supp. 1100, in which the employe injured was returning from repairing a switch, and *Plunkett* v. *Central of Ga. Ry. Co.,* 105 Ga. 203, 30 S. E. 728, in which the employe was a car sealer and was injured while discharging his duties. Neither of these cases show that it was customary for the employes to cross the tracks at the point where the injuries occurred. In other cases it has been held under facts similar to the principal case that the company owes the duty of warning the employe. *Cincinnati N. O. & T. P. Ry. Co.* v. *Mayfield, Adm'r.,* 145 Ky. 305; *Chicago I. & L. Ry. Co.* v. *Cunningham,* 33 Ind. App. 145. The courts in these cases say that where it is customary for the employes to cross the tracks, and where it is done with the knowledge and consent of the company, as it was in this case, the company should anticipate the presence of people on the track and should not move the cars without reasonable warning and reasonable lookout. Under the reasoning in these cases, the question of whether or not there was a defined path was not controlling and the court should have left the question to the jury to decide whether under all the facts the company was guilty of negligence.

MUNICIPAL CORPORATIONS—CONTRACT NOT TO ASSESS PARTICULAR PROPERTY-OWNERS FOR LOCAL IMPROVEMENTS.—On the widening and improvement of a street, certain abutters contracted to accept nominal sums as payment for land taken and damages for lowering of grade, and also to remove the earth necessary to grade; while the city in turn agreed that their property should be eliminated from any assessment for such improvement. The property was assessed nevertheless, and after payment of the assessment, the city was sued upon the contract. *Held* that such contract was ultra vires and void. *H. S. Turner Inv. Co.* v. *City of Seattle* (Wash. 1912), 126 Pac. 426.

Where a valid power exists, but is merely exercised in an invalid way, the defects in the mode of acting may be disregarded and the contract enforced or recovery by another method allowed; but where there is no valid power, the contract can in no case be enforced. 2 DILLON, MUN. CORP. (5th Ed.) § 791; *Criswell* v. *Director School District No. 24,* 34 Wash. 420, 75 Pac. 984; *Hitchcock* v. *Galveston,* 96 U. S. 341; *Moore* v. *New York,* 73 N. Y. 238; *South Covington District* v. *Kenton Water Co.,* 117 Ky. 489, 78 S. W. 420. A contract in which a municipality agrees, in return for conveyance of land, release of all claims for damages, etc., to hold certain property exempt from payment of future special assessments for local improvements is gen-